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August 24, 2005

BY ELECTRONIC AND OVERNIGHT MAIL

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 04-33

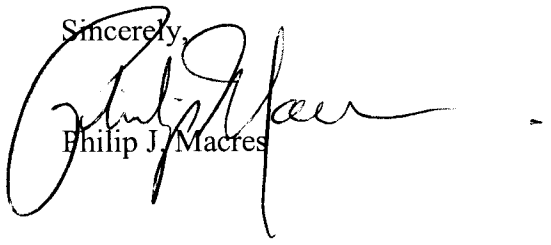
Dear Secretary Cottrell:

Attached hereto for filing in the above-referenced proceeding is the Motion for Reconsideration and Clarification of CTC Communications Corp. and Lightship Telecom, LLC.

The original and nine (9) additional copies of this filing are attached. Also attached is an extra copy of this filing. Please date-stamp it and return it in the attached, postage prepaid envelope provided. In addition, please note that a copy of this filing will be submitted to the Department in electronic format by E-mail attachment to dte.efiling@state.mass.us.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,



Philip J. Macres

Enclosure

cc: Tina Chin, Arbitrator
Jesse Reyes, Arbitrator
DTE 04-33 Service List

BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	**D.T.E. 04-33**

MOTION FOR RECONSIDERATION AND CLARIFICATION OF CTC COMMUNICATIONS CORP. AND LIGHTSHIP TELECOM, LLC

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Dated: August 24, 2005

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MOTION FOR RECONSIDERATION AND CLARIFICATION OF CTC COMMUNICATIONS CORP. AND LIGHTSHIP TELECOM, LLC

Pursuant to 220 C.M.R. § 1.11(10), CTC Communications Corp. ("CTC") and Lightship Telecom, LLC ("Lightship") hereby submit their Motion for Reconsideration and Clarification of the Department's July 14, 2005 Arbitration Order ("Order") in the above-captioned proceeding.

I. SUMMARY

CTC and Lightship ask that the Department reconsider certain decisions because they improperly interpret the *TRO*[1] *and TRRO*[2] as well as CTC's and Lightship's interconnection agreements. Specifically and as further discussed below, the Department's conclusion that the broadband (FTTP and Hybrid Loop) unbundling exemption extended to cover the enterprise market; and the cap on 10 DS1 transport circuits per route applied even where DS3 loops are

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[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003) ("*TRO*") (subsequent history omitted).

[2] *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC

available as UNEs are erroneous. These decisions should be reconsidered because it would be a mistake and legal error to categorically ignore the Act and evidence of the FCC's intent in the *TRO* by solely relying on the "plain meaning" of the FCC rules established in that proceeding. If the Department does not reconsider this decision, it should, at a minimum, clarify its decision so that it is consistent with footnote 956 of the *TRO* and makes clear that DS1 and DS3 loops are governed only by the sections addressing those loops directly, and not also by the FTTH/C and Hybrid Loop terms.

In addition, the Department's decision that the EELs provisioned prior to the effective date of the *TRO* must be recertified and meet the *TRO's* service eligibility criteria is an improper interpretation of the *TRO*. Reconsideration of this decision is warranted because the Department mistakenly overlooked the FCC's statements in the *TRO* that there are only three instances when the new service eligibility criteria must be met and none of them apply to EELs that were in-place prior to the *TRO's* effective date.

Furthermore, the Department misconstrued CTC's and Lightship's interconnection agreements and held that no amendment is required to implement the *TRO* and *TRRO*. A proper reading of these agreements and application of the law requires an amendment to implement these orders.

II. STANDARD OF REVIEW

The Department's Procedural Rule 220 C.M.R. § 1.11(10) authorizes a party to file a motion for reconsideration of a final Department Order. A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon

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Docket No. 01-338, Order on Remand, 19 FCC Rcd 16783, FCC 04-290 (rel. Feb. 4, 2005) ("*TRRO*") (subsequent history omitted).

the decision already rendered.[3] Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence.[4] Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning.[5]

III. ARGUMENT

A. It Would be a Mistake and Legal Error to Categorically Ignore the Act and Evidence of the FCC's Intent in Rendering a Decision Based Solely on the "Plain Meaning" of an FCC Regulation Read in Isolation

The Department decided two issues based on what it found to be the plain meaning of the rules attached to the FCC's orders, and determined that because no ambiguity was apparent on the face of the rule that the Department would not look to the text of the orders.[6] CTC and Lightship seek reconsideration of this standard, both because it resulted in an incorrect determination of these two issues, but also to assure that future cases are not judged based upon such precedent. The two rulings are:

- the broadband (FTTP and Hybrid Loop) unbundling exemption would be extended to cover the enterprise market; and
- the cap on 10 DS1 transport circuits per route would be applied even where DS3 loops are available as UNEs.

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[3] *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20-Part A-A, at 3 (Jan. 14, 2003).

[4] *Id.* at 4.

[5] *Id.* at 4.

[6] Order at 77, 176-77, & 179.

In both instances, the plain language of the rule attached to an FCC Order appears to support Verizon's position, whereas the text of those Orders support the CLEC position. The Department decided not to consider the FCC's intent in these instances. Instead, the Department held that the "plain language of the rule must prevail over the claim of inconsistency with the FCC's [orders]."[7] The Department explained its decision as follows:

> The Supreme Court has repeatedly emphasized the importance of the plain meaning rule, stating that if the language of a statute or regulation has a plain and ordinary meaning, *courts* need look no further and should apply the regulation as it is written. In this case, there is no ambiguity of the rule itself .... We have no occasion to look to the FCC's discussion of the rule.[8]

This conclusion is incorrect for at least two reasons. First, even if it were appropriate for the Department to bind itself to the standards under which *courts* interpret Congressional statutory delegations to federal agencies (which, as discussed below, it is not), courts would not use this rule of construction in considering FCC's section 251 rules because the FCC itself has explained that its orders are part of its rules and that the orders themselves have the force of law. *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166, 11177-78, ¶¶ 20-21 (2000) (explaining that its rules established in the *Local Competition Order* must be "read in conjunction with the rest of the Order [and other rules].").

Second, while a blind approach may be appropriate for a court, which is not supposed to engage in policy preference, it is not the appropriate standard for a public utility commission that is statutorily charged and entrusted with promoting competition and protecting the public interest. In particular, section 252 itself compels state arbitrators to *independently* consider

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[7] Order at 77.

[8] Order at 77 (emphasis added) (citations omitted).

whether an agreement "meet[s] the requirements of section 251."[9] If Congress had merely wanted arbitrators to act as robots that would regurgitate FCC rules exactly as they had been written by the FCC – no more, no less – it would not have needed to conscript state commissions for this task. For the Department to simply decide that it has "no occasion to look to the FCC's discussion" and no occasion to consider the merits of the issue independently would be failing its obligations under the Act. The Department therefore should retract its application of a "plain meaning" rule to these two issues.

If the Department agrees that it should have at least looked to the FCC's Orders on these two issues, it should then also reconsider its finding that the Competitive Carrier Coalition's ("CCC") interpretation of the scope of the broadband unbundling exemption is precluded by ¶ 210 of the *TRO*. As the Department noted, in that paragraph the FCC stated that while it "adopt[s] loop unbundling rules specific to each loop type, our unbundling obligations and limitations for such loops do not vary based on the customer to be served." The CCC already explained in its Reply Brief that ¶ 210 simply means that a large corporation would not be treated as an enterprise customer where it ordered services typical of a mass market customer, and a very small business that ordered services typical of a large enterprise customer would not be treated as a mass market customer. But ¶ 210 could not possibly be interpreted to mean that all of the *TRO's* unbundling rules apply equally to all types of customers – on the contrary, the *TRO* did in fact establish unbundling rules that "vary based on the customer to be served." For example, it is undisputed that the *TRO* eliminated enterprise switching but generally preserved

[9] 47 U.S.C. § 252(e)(2)(B). This statute states that state commission can only reject an arbitrated agreement if it fails to "meet the requirements of section 251, including the regulations prescribed by the [FCC]." The term "including" here indicates that the FCC regulations are only part of the scope of the state's review, and that it must also consider consistency with section 251 itself.

mass market switching. What ¶ 210 really means is that if a Fortune 10 corporation orders a single telephone line to an apartment unit it owns, that line would be treated as a mass market loop, whereas if a small business for some reason ordered a DS3, it would be treated as an enterprise loop.[10] The Department's reliance on ¶ 210 is clearly incorrect, and it should withdraw that portion of its decision regardless of whether it amends its ultimate resolution of Issue 13.

Therefore, the Department on reconsideration should determine to withdraw its reliance on (1) a "plain meaning" test that ignores FCC Orders, and (2) an interpretation that *TRO* ¶ 210 precludes adoption of the CCC's proposal on Issue 13. In such event, the Department will need to make new determinations to resolve these two arbitration issues. The CCC will not restate its arguments on the merits of these two issues, which are already set forth in its briefs.

B. The Department Should Clarify Its Decision to Prevent Verizon From Misusing the FTTH and Hybrid Loop Rules as a Backdoor to Eliminate its DS1 and DS3 Loop Unbundling Obligations

Even if the Department does not reconsider in full its decision to limit the broadband unbundling exemption to the mass market, it should at least clarify that its decision does not apply to DS1 and DS3 loops.[11] Subsequent to briefing in this proceeding, it became evident that some ILECs intend to try to use the Hybrid Loop rules as a backdoor to eliminate the unbundling of DS1 and DS3 loops that were preserved by the *TRRO*. Footnote 956 of the *TRO* unambiguously rejected such a result:

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[10] The CCC proposal is consistent with that construct, as it refers to the capacity of telecommunications facilities at the location in question, and not the size of the customer's overall business.

[11] To the extent that the Department believes that this issue is more appropriately addressed as a reconsideration rather than as a clarification, this portion of CTC and Lightship's Motion would also satisfy the Department's standard for reconsideration.

> DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops . . . *The unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers.*[12]

While DS1 loops are often provided over mixed fiber-copper facilities, the *TRO* established an entirely different set of rules for DS1 loops than for Hybrid Loops, with different standards and a different framework. DS1 and DS3 loops are addressed in separate FCC rules from Hybrid Loops,[13] and in an entirely separate sections of the *TRO*.[14] As the above quotation makes clear, the FCC expressly held that the Hybrid Loop rules were not to be used as a Trojan Horse to eliminate DS1 and DS3 unbundling – the result that Verizon has apparently been quietly hoping for here.

The FCC's intent to limit the FTTH and Hybrid Loop rules to DS0 loops is further evidenced by the FCC's decision to require ILECs to offer a 64kbps voice-grade channel to CLECs as a replacement for unbundled loop access where the ILEC has deployed brown field fiber loops or hybrid loops in order to enable CLECs to continue to provide non-packetized voice services that they offer today.[15] A 64 kbps channel has the same bandwidth as a DS0 loop, but it is obviously not a useful replacement for a DS1 or DS3 loop. The FCC's references to a 64kbps

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[12] *TRO*, ¶ 325 n.956 (emphasis added). This footnote did not mention DS3 loops because it appeared in the section of the *TRO* dealing with DS1 loops. However, it cannot seriously be disputed that if the Department agrees with CTC and Lightship's argument here with respect to DS1 loops that the same finding would also necessarily apply to higher-capacity DS3 loops.

[13] The UNE loop rules are addressed in FCC Rule 51.319(a). Hybrid Loops are addressed in subsection (2) of this rule, whereas DS1 and DS3 loops are addressed in subsections 4 and 5, respectively.

[14] The *TRO*'s discussion of Hybrid Loops is at ¶¶ 285-297, which is part of a larger section entitled "Mass Market Loops" (¶¶ 211-297). DS1 and DS3 loops are addressed only in ¶¶ 320-340, which is part of the section entitled "Enterprise Market Loops" (¶¶ 298-342).

[15] *TRO*, ¶¶ 277, 296.

channel in this instance clearly reflects that it only intended its FTTH and Hybrid Loop rules to eliminate obligations to unbundle certain DS0 loops, not DS1 and DS3 loops.

The extension of the broadband unbundling exemptions to DS1 and DS3 loops would produce nonsensical results. If the FCC's FTTH relief applied to every fiber loop, the FCC's decision in the *TRO* to preserve dark fiber loops as a UNE would have been pointless,[16] as would the FCC's subsequent clarification that fiber loops to multi-unit premises that include both enterprise and mass market customers would be eligible for unbundling relief only if the MDU was "predominantly residential."[17] Had the FTTH rule applied to all loops, it would have already applied to all multi-unit premises; only because the FTTH rule applied only to mass market customers did the FCC need to clarify how the rules should apply to buildings that included both mass market and enterprise customers. Verizon cannot seriously suggest that the *MDU Order*, entered at the request of BellSouth, was intended to re-expand ILECs' unbundling obligations beyond those of the *TRO* to offer FTTH loops to non-predominantly residential MDUs. In addition, making DS1 and DS3 loops a subset of Hybrid Loops would render largely irrelevant the complex rules governing such loops adopted by the *TRRO*. The *TRRO* engaged in an extensive discussion of DS1 and DS3 loops, never once stating that its new rules for these UNEs bore any relation to the hybrid loop rules adopted in the *TRO*.

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[16] If the FTTH unbundling exclusion applied to every single fiber loop, whether mass market or enterprise, then it would have made no sense for the FCC to turn around and order unbundling of what, under Verizon's proposed definition in this case, would be dark FTTH loops. The CLECs acknowledge that the *TRRO* later eliminated Section 251 unbundling obligations dark fiber loop UNEs for all customer premises. However, that has no bearing of what the FCC intended with respect to FTTH loops at the time that it wrote the *TRO*. Verizon has not claimed that the *TRRO* modified or clarified the FTTH or Hybrid Loop requirements.

[17] *Review of the Section 251 Obligations of Local Exchange Carriers*, CC Docket 01-338, Order on Reconsideration, FCC 04-191, ¶ 4 (rel. Aug. 9, 2004) ("*MDU Order*").

Finally, the inapplicability of the broadband exemption to DS1 and DS3 loops is also demonstrated by the arguments in the CCC's briefs demonstrating that the purpose and design of these rules apply only to the mass market. Wherever the line is between the enterprise and mass market, the FCC has clearly held that a DS1 is on the enterprise side of it.[18]

Therefore, even if the Department does not reconsider its decision not to limit the broadband unbundling exemption to the mass market, it should clarify its decision to reflect footnote 956 of the *TRO* and make clear that DS1 and DS3 loops are governed only by the sections addressing those loops directly, and not also by the FTTH/C and Hybrid Loop terms.

C. The Department Improperly Held That EELs Provisioned Prior to the Effective Date of the *TRO* Must Meet the *TRO's* Service Eligibility criteria

The Order interprets "the Triennial Review Order as requiring re-certification for existing EELs, and, as with new orders, the certification must be circuit specific."[19] It explained that "[b]ecause the new service eligibility criteria are significantly different from the requirements under the old rules, and because circuits that qualified under the former rules may not qualify under the new rules, it is only logical that the FCC would require recertification."[20]

The Department should reconsider this decision because it mistakenly overlooked the FCC's statements in the *TRO* that there are *only* three instances when the new service eligibility criteria must be met and *none* of them apply to EELs that were in-place prior to the effective date of the *TRO*. In particular, the FCC made "*clear* that the service eligibility criteria must be satisfied (1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination

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[18] *See, e.g., TRRO,* n.625.

[19] Order at 129.

[20] *Id.*

(commingled EEL)."[21] An EEL existing prior to the effective date of the *TRO* would never fall within any of these three criteria: it would not result from "a *conversion* of a special access circuit to a high-capacity EEL," nor is it a "*new* high-capacity EEL," nor could it have been obtained as a "commingled EEL."[22] Thus, the FCC's statement in the *TRO* that "*new orders for circuits are subject to the eligibility criteria*" means just that and nothing more.[23]

An arbitrator addressing this precise issue in Vermont agreed with this interpretation of the *TRO*. He held that "EELs ordered prior to the effective date of the TRO (October 2, 2003) should not require re-certification of the CLEC regarding service eligibility."[24] He emphasized that the decision is supported by the FCC's statements in the TRO that "new orders for circuits are subject to the eligibility criteria" and that "[t]he eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past."[25] The Department should on reconsideration adopt this determination from Vermont.[26]

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[21] *TRO*, ¶ 593 (emphasis added) & 624.

[22] Verizon did not allow CLECs to obtain commingled EELs prior to the *TRO*, until ¶ 579 of the *TRO* made clear that Verizon's commingling restrictions were unlawful. Thus, any EEL existing prior to the effective date of the *TRO* is a UNE loop and transport combination, not a commingled EEL.

[23] *TRO*, ¶ 623 (emphasis added).

[24] *Petition of Verizon New England Inc., d/b/a Verizon Vermont, for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Vermont Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order,* Docket No. 6932, Proposal for Decision, at 199-200 (Vt. P.S.B. July 15, 2005) (pages attached hereto as Exhibit A).

[25] *Id.* at 200 (citing *TRO*, ¶¶ 623 and 589).

[26] If the Department denies this request for reconsideration, CTC and Lightship move in the alternative for an extension of the deadline for CLECs to recertify their EELs to 30 days from the date the Department releases its ruling on this motion.

D. The Department Misconstrued CTC's Interconnection Agreement

The Order concluded that "no amendment of the CTC agreement is necessary in order to implement the terms of the Triennial Review Order and the Triennial Review Remand Order" on the theory that § 1.5 of CTC's UNE Remand Amendment trumps Section 8.2 of CTC's Agreement (which requires an amendment).[27] This conclusion is erroneous, because the Department inadvertently overlooked another more specifically relevant section of CTC's Agreement, and because it mistakenly read a conflict into CTC's Agreement when the Agreement instead required otherwise.

First, the Department mistakenly concluded that § 1.5 of CTC's UNE Remand Amendment[28] has been triggered by the *TRO* and *TRRO* and therefore, no amendment is warranted.[29] By its terms, this section only applies when an authority holds that "Verizon is not required by Applicable Law to provide such UNE."[30] That event has not occurred

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[27] Order at 25.

[28] Specifically § 1.5 provides that,

> Without limiting Verizon's rights pursuant to Applicable Law or any other section of the Agreement, this UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to CTC, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNE or Combination, Verizon may terminate its provision of such UNE or Combination to CTC. If Verizon terminates its provision of a UNE or a Combination to CTC pursuant to this Section 1.5 and CTC elects to purchase other services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with CTC to coordinate the termination of such UNE or Combination and the installation of such services to minimize the interruption of service to Customers of CTC; and, (b) CTC shall pay all applicable charges for such services, including, but not limited to, all applicable installation charges.

[29] Order at 25.

[30] The term "Applicable Law" is not specifically defined in the CTC Agreement. However, Part B of the Agreement § 1.5 defines the "Act" as "the Communications Act of 1934

here, because even though the *TRO* and the *TRRO* relieved Verizon of its obligation under § 251(c)(3) to provide unbundled loops, switching and transport in certain circumstances, Verizon remains obligated to provide these facilities under § 271 on an unbundled basis.[31] CTC begs the Department's patience to understand that this statement is not an attempt to seek reconsideration of Issue 31. Instead, CTC is noting that Section 3 of the Pricing Appendix to CTC's UNE Remand Amendment already provides specific terms to govern the situation in which Verizon remains obligated to provide a facility under § 271 after it is no longer required under § 251. Section 3 (although poorly written) confirms Verizon's ongoing obligation to provision the affected elements pursuant to § 271(c)(2)(B).[32] Hence, the Department's reliance on § 1.5 is therefore in error.

(47 U.S.C. 151, et seq.), as amended." Moreover, Black's Law Dictionary defines law as, among other things, "[t]he set of rules or principles dealing with a specific area of a legal system,"... a "statute." BLACK'S LAW DICTIONARY ABRIDGED, at 712 (7th ed. 2000). "Applicable Law" thus includes Verizon's obligation under 271(c)(2)(B)(iv)-(vi) of the Act to provision loops, transport and switching (which are network elements) on an unbundled basis regardless of Verizon's unbundling obligation pursuant to Section 251(c)(3). The FCC made this clear in the *TRO* when it stated that "the [unbundling] requirements of section 271(c)(2)(B) establish an independent obligation for the BOC to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251." *TRO*, ¶ 653.

[31] Pursuant to Sections 271(c)(2)(B)(iv)-(vi) of the Act, BOCs must provide: "Local loop transmission from the central office to the customer's premises, *unbundled* from local switching or other services"; Local transport from the trunk side of a wireline local exchange carrier switch from the *unbundled* from switching or other services"; and "Local switching *unbundled* from transport, local loop transmission or other services." 47 U.S.C. §§ 271(c)(2)(B)(iv)-(vi) (emphasis added). *See also Verizon Maine Proposed Schedules, Terms Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21),* Docket No. 2002-682, Examiner's Report, 50-53 (rel. June 20, 2005) (interpreting an interconnection agreement as requiring Verizon to offer 271 UNEs) (pages attached hereto as Exhibit B).

[32] Section 3 of the Pricing Appendix to CTC's UNE Remand Amendment (attached hereto as Exhibit C), states as follows:

Second, even if the Department believes that § 1.5 applies, the Department erroneously held that it trumped § 8.2's requirement of an amendment. This is so because CTC's UNE Remand Amendment expressly requires that CTC's Agreement and Amendment equally apply in such circumstances and must be interpreted in a manner so that they do not conflict with each other. Section 2 of the preamble to CTC's UNE Remand Amendment specifically states:

> Conflict between the Amendment and the Terms. This Amendment shall be deemed to revise the terms and provisions of the Terms [i.e., the underlying Agreement] to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Terms, this Amendment shall govern, ***provided, however*, that the fact that a term or provision appears in this Amendment but not in the Terms, or in the Terms but not in this Amendment, shall not be interpreted as, or deemed grounds for finding a conflict for purposes of this Section 2.**[33]

In this case, Section 8.2 of CTC's Agreement does not conflict with § 1.5 of CTC's UNE Remand Amendment because § 1.5 includes provisions that do not appear in the Agreement. Likewise, Section 8.2 of the Agreement includes provisions that do not appear in the Amendment. Therefore, rather than presuming a conflict, the Department instead must attempt to give effect to both provisions by interpreting them in a manner that harmonizes them with one another.

To elaborate, although § 1.5 states that Verizon may terminate its provision of a UNE when it is relieved an unbundling obligation, it does not specify that Verizon may do so without

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> If Verizon is a Bell Operating Company (as defined in the Act) and in order to comply with Section 271(c)(2)(B) of the Act provides a Service under the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment that Verizon is not required to provide by Section 251 of the Act, Verizon shall have the right to establish Charges for such Service in a manner that differs from the manner in which under Applicable Law (including, but not limited to, Section 252(d) of the Act) Charges must be set for Services provided under Section 251.

an amendment whereas § 8.2 specifically requires one. Thus, pursuant to Section 2 of the preamble to CTC's Amendment, there is no conflict and these provisions must instead be interpreted in a manner so that they mutually apply and can coexist with one another. Such an interpretation requires an amendment before Verizon terminates any UNE offering that it is no longer required to provide as a result of a change in law.[34]

In any event, § 8.2 is more applicable in this instance than § 1.5 of the UNE Remand Amendment because § 8.2 specifies that an amendment is required if a change in law "*materially reduce[s]*...the services required by statute or regulations and embodied in this Agreement." The *TRO* and *TRRO* did just that; they did not "terminate" Verizon's obligation to provide loops and transport altogether (as referenced in § 1.5) , but instead only "materially reduced" the instances in which this obligation applies, as referenced in § 8.2.

Accordingly, on reconsideration, the Department should hold that CTC's Agreement requires an amendment to implement the *TRO* and *TRRO*.

E. The Department Misconstrued Lightship's Interconnection Agreement

The Department held that "the terms of the Triennial Review Order and the Triennial Review Remand Order may be implemented without renegotiation of the terms of the interconnection agreements for Group 2," which includes Lightship.[35] It rejected the CLECs' argument that "there has been no determination under 'all' applicable law that Verizon is

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[33] CTC UNE Remand Amendment, preamble, § 2.0 (bolding added) (attached hereto as Exhibit D).

[34] CTC Agreement, § 20.16, attached hereto as Exhibit E, states as follows: "Amendments and Modifications. No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by both Parties."

[35] Order at 22.

relieved of its obligation to provide UNEs and therefore, §§ 11.0 and 27.4 do not apply."[36] In rendering this decision, it concluded that,

> As we concluded for Group 1, we find that under all laws applicable to the parties' obligations to provide access to certain "Network Elements on an unbundled basis" under § 11.0 of the agreement, namely § 251(c)(3) and the rules promulgated by the Triennial Review Order and the Triennial Review Remand Order, there has been a determination that Verizon is no longer required to provide them. Verizon may or may not have an independent obligation to provide interconnection and access to those network elements on "just and reasonable" terms, pursuant to 47 U.S.C. § 271, but, even so, *not on an unbundled basis*, and therefore, not under § 11.0.[37]

This decision mistakenly overlooks the fact that Sections 271(c)(2)(B)(iv)-(vi) explicitly require that Verizon provision loops, switching and transport on "an *unbundled basis*." Indeed, each of those three subsections uses the word "unbundled" to describe the basis on which the elements must be provided, making it plain error for the Department to have concluded that these elements need not be provided under Section 271 "on an unbundled basis." Reconsideration is appropriate on these grounds alone. Thus, even though the *TRO* and the *TRRO* relieved Verizon of its § 251(c)(3) obligation to unbundle loops, switching and transport in certain circumstances, Verizon is still required by Applicable Law (under the Lightship Agreement and Amendments to it) to offer these network elements *on an unbundled basis* pursuant to Sections 271(c)(2)(B)(iv)-(vi).

Nowhere in Lightship's Agreement or Amendments are Verizon's unbundling obligations limited to unbundled network elements that Verizon is required pursuant to § 251(c)(3). If anything, § 3 of the Pricing Appendix to Lightship's UNE Remand Amendment, which has the same language referenced above in CTC's UNE Remand Amendment,[38] confirms

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[36] Order at 20.

[37] Order at 21 (emphasis added).

[38] Attached hereto as Exhibit F.

Verizon's obligation to offer UNEs pursuant to § 271(c)(2)(B). Thus, regardless of whether the *TRO* or the *TRRO* changed Verizon's Section 251 unbundling obligations, Verizon remains subject to an unbundling requirement pursuant to Section 271. Consequently, Verizon cannot cease providing UNEs completely, but must continue to provide them in accordance with the remaining unbundling obligations.

Because Verizon's unbundling obligations may have changed, but have not been eliminated, by Applicable Law, Section 27.3 of Lightship Agreement applies and not Sections 27.4 and 11.0 of the Agreement or Section 1.5 of the UNE Remand Amendment as noted in Order. Specifically, Section 27.3 states:

> Except as explicitly provided in Sections 4.2.4, 5.7 and 22 of this Agreement,[39] in the event of a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action.

In other words, this section expressly provides that any changes in Applicable Law, such as those resulting from the *TRO* and *TRRO,* require the parties to negotiate in good faith an appropriate amendment to their interconnection agreement to implement those changes. Accordingly, on reconsideration, the Department should hold that Lightship's Agreement required an amendment to implement the *TRO* and *TRRO.*

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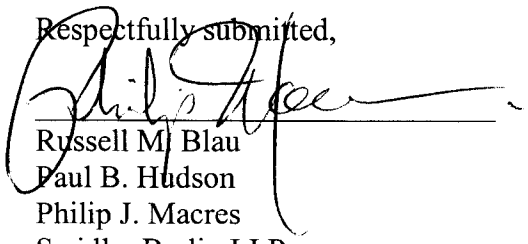
[39] These provisions are not relevant here. Section 4.2.4 addresses geographically relevant interconnection points; Section 5.7 addresses intercarrier compensation; and Section 22 addresses term and termination.

IV. CONCLUSION

Wherefore, for the foregoing reasons, the CTC and Lightship respectfully request that the Department reconsider or clarify the determinations it rendered on July 14, 2005 in accordance with the recommendations made herein.

Respectfully submitted,



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Counsel for CTC Communications Corp. and Lightship Telecom, LLC

Dated: August 24, 2005

EXHIBIT A

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6932

Petition of Verizon New England, Inc., d/b/a/ Verizon Vermont, for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Vermont, Pursuant to Section 252 of the Communications Act, as amended, and the Triennial Review Order)

Order entered:

PROPOSAL FOR DECISION

AT&T urges the Board to reject Verizon's effort to force the CLECs to "re-certify" existing arrangements on a circuit-by-circuit basis – a make-work process for which Verizon offers no legitimate justification. AT&T states that its eligibility for such circuits has already been established, and forcing AT&T – or any other CLEC – to go through this process will unnecessarily increase costs. Further, AT&T asserts that the Board should permit competitors to re-certify all prior conversions in one batch. For future conversions requests, AT&T urges, rather than requiring competitors to certify individual requests on a circuit-by-circuit basis, the Board should permit competitors to submit orders for these as a batch.

CCC's Position:

CCC states that, under Verizon's proposal, any EEL provided prior to the effective date of the *TRO*, October 2, 2003, must satisfy the eligibility criteria established as of October 2, 2003. CCC points out that the *TRO*'s eligibility requirements do not, however, apply retroactively and only apply prospectively. CCC argues that, if that was the case, the FCC would not have limited this statement to "new" orders but would have discussed old orders as well which it didn't.

CCC's proposal mirrors the FCC decision, in that (1) if a circuit qualifies under the new standards but did not qualify under the old standards, a CLEC cannot recover the excessive charges prior to the effective date; (2) if a circuit does not qualify under the new standards but did qualify under the old standards, the ILEC may not recover past losses; and (3) EELs may continue to be provided under the old standards up to the effective date.

CCG's Position:

CCG maintains that any EEL provided by Verizon to a competitive carrier prior to October 2, 2003, should not be required to meet the service eligibility criteria set forth in the *TRO* and Section 51.318 of the FCC's rules.

In its Reply Brief, CCG argues that Verizon may not force CLECs to "re-certify" existing arrangements on a circuit-by-circuit basis, as Verizon has presented no legitimate justification for this process when eligibility for these circuits has already been established.

Discussion and Proposal

EELs ordered prior to the effective date of the *TRO* (October 2, 2003) should not require re-certification of the CLEC regarding service eligibility.

The FCC stated in the *TRO* that "new orders for circuits are subject to the eligibility criteria."[108] Further, the FCC stated in paragraph 589 of the *TRO* that "[t]he eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past.

(b4) For conversion requests submitted by a CLEC prior to the effective date of the amendment, should CLECs be entitled to EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?

Verizon's Position:

Verizon asserts that several CLECs want the *TRO*'s new commingling and conversion obligations to take effect retroactively to the October 2, 2003, effective date of the *TRO*, rather than upon the effective date of the Amendment, in order to receive more favorable UNE pricing for the facilities at issue for the time before the Amendment took effect. Verizon argues, however, that the FCC declined in the *TRO* to override existing contracts to order automatic implementation of its rules as of a date certain, instead requiring carriers to use Section 252 to amend their agreements, where necessary, to implement the *TRO* rulings.

Verizon contends that the delay in implementing amendments was due to the CLECs' continuing obstruction, and they should not be rewarded for ignoring the FCC's directive to promptly amend their contracts by awarding them at least two years' worth of the difference between their existing contract rate that applies under the special access tariff and the lower contract rate for UNE EELs. Verizon further asserts that accepting the CLECs' retroactive billing proposal would impose a substantial, unanticipated, and unjustified liability on Verizon.

In its Reply Brief, Verizon restates its positions from the Initial Brief. In addition, Verizon points out that conversions were not required prior to the *TRO*; in fact, Verizon asserts that the FCC's discussion of conversions makes clear that this was a new obligation. Verizon states that the FCC introduced the subject of conversions by noting, "We conclude that carriers may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the eligibility

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108. TRO at ¶ 623.

EXHIBIT B

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)

June 20, 2005

EXAMINER'S REPORT

NOTE: This Report contains the recommendation of the Hearing Examiner. Although it is in the form of a draft of a Commission Order, it does not constitute Commission action. Parties may file responses or exceptions to this Report on or before **noon on July 15, 2005**. It is expected that the Commission will consider this report at a special deliberative session on **July 25, 2005**.

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AT&T initially took no position on GWI's claim but in reply comments noted its opposition to Verizon's contention that its special access rates constituted its Section 271 rates. AT&T argued that imposing "inflated special access" rates on loop and transport facilities will allow Verizon to impose "permanent and insurmountable" disadvantages on its competitors. AT&T believes that TELRIC-based pricing must be imposed for Section 271 rates in order to accomplish the competitive goals of Section 271.

ii. Verizon

Verizon contends that its interconnection agreement with GWI allows it to suspend provision of any de-listed UNEs, i.e. UNEs no longer required under Section 251. Verizon alleges that it sent GWI notice that it was discontinuing the provision of OC-3 transport in an October 2, 2003 letter and that it is no longer contractually bound to provide GWI with OC-3 transport. Finally, Verizon alleges that any obligation it might have under Section 271 or state law is not addressed by the parties' interconnection agreement. Verizon specifically contends that the Commission's October 3, 2004 order in this proceeding has no impact on its obligations to provide OC-3 transport because the Commission has yet to approve a tariff.

iii. Decision

First, we find, similar to our decision in Section III (A)(8) above, that Verizon must continue to provide unbundled access to OCn level transport pursuant to Section 271, Checklist Item No. 5, because neither the *TRO*, the *TRRO*, nor the *Broadband 271 Forbearance Order* explicitly relieved Verizon of its Section 271 transport obligations. Thus, Verizon must provide OCn level transport at

prices which meet the FCC's just and reasonable pricing standard. Until Verizon submits rates for our approval or provides us with FCC-approved rates, it shall use the previously-approved TELRI rates for OCn transport.

Verizon's arguments, however, raise another important issue which impacts the availability of each of the Section 271 UNEs which we have found must continue to be provided. If the wholesale tariff is not yet in effect, the parties' interconnection agreements govern their relationship, i.e. the provision of UNEs. Verizon contends that its agreements allow it to refrain from providing de-listed UNEs and that CLECs must enter into separate Section 271 commercial agreements in order to access Section 271 UNEs. (*See generally,* Verizon's arguments concerning its VISTA agreements.) Thus, we must examine the language used in GWI's Interconnection Agreement (and theoretically many, if not all, of the other CLECs' interconnection agreements) to determine whether the language permits Verizon to unilaterally eliminate de-listed UNEs or whether the "Applicable Law" language includes both Section 251 and Section 271.

Section 4.1 of GWI's Interconnection Agreement defines "Applicable Law" as follows:

> The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the State of Maine, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.

There is no reference in this section to Section 251 or Section 271 of the TelAct.

Section 1.1. of the Network Elements Attachment to GWI's Interconnection Agreement states as follows:

> Verizon shall provide to Great Works, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, access to Verizon's Network Elements on an unbundled basis and in combinations (Combinations); provided, however, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide unbundled Network Elements (UNEs) and Combinations to Great Works only to the extent required by Applicable Law and may decline to provide UNEs or Combinations to Great Works to the extent that provision of such UNEs or Combinations is not required by Applicable Law.

Again, there is no mention of Section 251 or Section 271, only a reference to the term "Applicable Law." Section 1.5 of the Network Elements Attachments addresses the possibility of FCC or Commission action to modify Verizon's obligations. It states:

> Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to Great Works, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNE or Combination, Verizon may terminate its provision of such UNE or Combination to Great Works. If Verizon terminates its provision of a UNE or a Combination to Great Works pursuant to this Section 1.5 and Great Works elects to purchase other services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with Great Works to coordinate the termination of such UNE or Combination and the installation of such services to minimize the interruption of service to Customers of Great Works; and, (b) Great Works shall pay all applicable charges for such services, including, but not limited to, all applicable installation charges.

Once again there is no mention of Section 251 or Section 271.

Accordingly, we find, based upon the terms of GWI's Interconnection Agreement, that Verizon remains obligated to provision Section 271 UNEs unless and until, Verizon and GWI amend their Interconnection Agreement to

redefine the term "Applicable Law." With regard to other CLECs and their interconnection agreements, we place the burden on Verizon to come forward with proof that other interconnection agreements do not contain the same, or very similar, language concerning "Applicable Law." Until such time, Verizon remains obligated to provision Section 271 UNEs pursuant to its interconnection agreements until it obtains our approval of modified interconnection agreements.

4. Dark Fiber Transport

Dark fiber transport refers to unlit fiber facilities between two ILEC central offices.[84] In the *TRO,* the FCC made a national finding of impairment for dark fiber transport but delegated to the states the authority to find non-impairment on particular routes.[85] The *USTA II* decision overturned the FCC's delegation to states and remanded the matter back to the FCC.[86] In the *TRRO*, the FCC made a national finding of impairment for dark fiber transport but only on those routes where one end-point of the route is a wire center containing fewer than 24,000 business lines and fewer than three fiber-based collocators.[87] We apply Verizon's list of wire centers in Maine that meet the FCC's criteria and we find that only routes between the Bangor, Lewiston, and Portland wire centers are no longer subject to dark fiber transport unbundling pursuant to Section 251. These routes will be subject to the FCC's 18-month transition rules which require Verizon to continue to provision dark fiber transport on these routes for 18

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[84] *TRO* at ¶¶ 365, 381

[85] *TRO* at ¶ the 381, 384.

[86] *USTA II* at 574.

[87] *TRRO* at ¶ 66.

EXHIBIT C

Pricing Appendix to the UNE Remand Attachment

1. **General**

1.1. As used in this Appendix, the term "Charges" means the rates, fees, charges and prices for a Service.

1.2. Except as stated in Section 2, below, Charges for Services shall be as stated in this Section 1.

1.3. The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.

1.4. In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Exhibit A of this Pricing Appendix.

1.5. The Charges stated in Exhibit A of this Pricing Appendix shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Exhibit A of this Pricing Appendix also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.

1.6. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.5, if Charges for a Service are otherwise expressly provided for in the Agreement, the UNE Remand Attachment or this Pricing Appendix to the UNE Remand Attachment, such Charges shall apply.

1.7. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.6, the Charges for the Service shall be the Providing Party's FCC or Commission approved Charges.

1.8. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the Parties in writing.

2. **CTC Prices**

Notwithstanding any other provision of the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment, the Charges that CTC bills Verizon for CTC's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that CTC's cost to provide such CTC Services to Verizon exceeds the Charges for Verizon's comparable Services and CTC has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

3. **Section 271**

If Verizon is a Bell Operating Company (as defined in the Act) and in order to comply with Section 271(c)(2)(B) of the Act provides a Service under the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment that Verizon is not required to provide by Section 251 of the Act, Verizon shall have the right to establish Charges for such Service in a manner that differs from the manner in which

under Applicable Law (including, but not limited to, Section 252(d) of the Act) Charges must be set for Services provided under Section 251.

4. **Regulatory Review of Prices**

Notwithstanding any other provision of the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment, each Party reserves its respective rights to institute an appropriate proceeding with the FCC, the Commission or other governmental body of appropriate jurisdiction: (a) with regard to the Charges for its Services (including, but not limited to, a proceeding to change the Charges for its services, whether provided for in any of its Tariffs, in Exhibit A, or otherwise); and (b) with regard to the Charges of the other Party (including, but not limited to, a proceeding to obtain a reduction in such Charges and a refund of any amounts paid in excess of any Charges that are reduced).

EXHIBIT D

AMENDMENT NO. 1

to the

INTERCONNECTION AGREEMENT

between

VERIZON NEW ENGLAND INC., D/B/A VERIZON MASSACHUSETTS, F/K/A NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, D/B/A BELL ATLANTIC - MASSACHUSETTS

and

CTC COMMUNICATIONS CORP.

This Amendment No. 1 (this "Amendment") to the Interconnection Agreement (the "Agreement") which became effective July 14, 2000 is by and between Verizon New England Inc., d/b/a Verizon Massachusetts, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Verizon"), a New York corporation at 185 Franklin Street, Boston, Massachusetts 02110 and CTC Communications Corp. (CTC), a Massachusetts corporation with offices at 360 Second Avenue, Waltham, Massachusetts 02451. Verizon and CTC being referred to collectively, as the "Parties" and individually as a "Party". This Amendment covers services in the Commonwealth of Massachusetts the ("State").

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated July 14, 2000 the "Adoption Letter"), CTC adopted in the Commonwealth of Massachusetts, the interconnection agreement between MCImetro Access Transmission Services and Verizon (the "Terms"); and

WHEREAS, subsequent to the approval of the Terms CTC notified Verizon that it desired to amend the Terms; and

WHEREAS, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Terms and

WHEREAS, the Federal Communications Commission (the "FCC") issued an order on November 5, 1999 in CC Docket No. 96-98 (the "UNE Remand Order"), and issued a supplemental order on November 24, 1999 in the same proceeding, which orders became effective in part as of February 17, 2000 and fully effective as of May 17, 2000; and

WHEREAS, Verizon is prepared to provide network elements and collocation in accordance with, but only to the extent required by, Applicable Law.

NOW, THEREFORE, in consideration of the mutual promises, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the terms and conditions set forth in the UNE Remand Attachment and the Pricing Appendix to the UNE Remand Attachment attached hereto shall govern Verizon's provision of Network Elements to CTC.

2. Conflict between this Amendment and the Terms. This Amendment shall be deemed to revise the terms and provisions of the Terms to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Terms, this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Terms, or in the Terms but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.

5. Scope of Amendment. This Amendment shall amend, modify and revise the Terms only to the extent set forth expressly in Section 1 of this Amendment, and, except to the extent set forth in Section 1 of this Amendment, the terms and provisions of the Terms shall remain in full force and effect after the date first set forth above.

IN WITNESS WHEREOF, each Party has executed this Amendment, and it shall be effective upon execution by both Parties.

CTC COMMUNICATIONS CORP.

By: _____

Printed: John D Pitteyer

Title: Treas

VERIZON NEW ENGLAND INC., D/B/A VERIZON MASSACHUSETTS

By: _____

Printed: Steven J Pitterle

Title: Director – Contract Negotiations

EXHIBIT E

excess of those existing without reference hereto. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

20.12 **Technology Upgrades.** Nothing in this Agreement shall limit BA's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. BA shall provide MCIm written notice at least ninety (90) days prior to the incorporation of any such upgrades in BA's network which will materially impact MCIm's service. BA shall provide as much as one hundred eighty (180) days prior notice if it is reasonably possible to do so. MCIm shall be solely responsible for the cost and effort of accommodating such changes in its own network.

20.13 **Survival.** The Parties' obligations or any liabilities under this Agreement which by their nature are intended to continue beyond (or to be performed after) the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including without limitation, Sections 4.3, 6, 20.2.2, 20.4, 20.8, 20.9 and 20.11 of this Part A.

20.14 **Entire Agreement.** The terms contained in this Agreement, and any Parts, Attachments, Annexes, tariffs and other documents or instruments expressly referred to herein, are hereby incorporated into this Agreement by this reference as if set forth fully herein and, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals, agreements, representations, statements, negotiations and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

20.15 **Power and Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement.

20.16 **Amendments and Modifications.** No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by both Parties.

EXHIBIT F

Pricing Appendix to the UNE Remand Attachment

1. **General**

1.1. As used in this Appendix, the term "Charges" means the rates, fees, charges and prices for a Service.

1.2. Except as stated in Section 2, below, Charges for Services shall be as stated in this Section 1.

1.3. The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.

1.4. In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Exhibit A of this Pricing Appendix.

1.5. The Charges stated in Exhibit A of this Pricing Appendix shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Exhibit A of this Pricing Appendix also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.

1.6. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.5, if Charges for a Service are otherwise expressly provided for in the Agreement, the UNE Remand Attachment or this Pricing Appendix to the UNE Remand Attachment, such Charges shall apply.

1.7. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.6, the Charges for the Service shall be the Providing Party's FCC or Commission approved Charges.

1.8. In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the Parties in writing.

2. **Lightship Prices**

Notwithstanding any other provision of the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment, the Charges that Lightship bills Verizon for Lightship's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that Lightship's cost to provide such Lightship Services to Verizon exceeds the Charges for Verizon's comparable Services and Lightship has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

3. **Section 271**

If Verizon is a Bell Operating Company (as defined in the Act) and in order to comply with Section 271(c)(2)(B) of the Act provides a Service under the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment that Verizon is not required to provide by Section 251 of the Act, Verizon shall have the right to establish Charges for such Service in a manner that differs from the manner in which

under Applicable Law (including, but not limited to, Section 252(d) of the Act) Charges must be set for Services provided under Section 251.

4. **Regulatory Review of Prices**

Notwithstanding any other provision of the Agreement, the UNE Remand Attachment and this Pricing Appendix to the UNE Remand Attachment, each Party reserves its respective rights to institute an appropriate proceeding with the FCC, the Commission or other governmental body of appropriate jurisdiction: (a) with regard to the Charges for its Services (including, but not limited to, a proceeding to change the Charges for its services, whether provided for in any of its Tariffs, in Exhibit A, or otherwise); and (b) with regard to the Charges of the other Party (including, but not limited to, a proceeding to obtain a reduction in such Charges and a refund of any amounts paid in excess of any Charges that are reduced)